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Report of the Working Group on the Universal Periodic Review*

Belgium

Addendum

Views on conclusions and/or recommendations, commitments and replies presented by the State under review

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1. Belgium reaffirms its commitment to the universal periodic review, which has proved to be of great value in promoting and protecting human rights throughout the world.

2. Out of the 232 recommendations made during the dialogue, Belgium immediately accepted 161, of which 26 were deemed to have already been implemented or were being implemented, and took note of another 36. Belgium deferred consideration of 35 recommendations. These have now been considered and Belgium presents its replies herewith.

3. Belgium supports the following recommendations: 140.1, 140.4, 140.5, 140.6, 140.9, 140.10, 140.11, 140.12, 140.13, 140.15, 140.16, 140.17, 140.18, 140.19, 140.22, 140.24, 140.26, 140.27, 140.29, 140.35.

4. Belgium accepts the following recommendations in part: 140.14, 140.28. Belgium agrees to adopt a national action plan to combat racism; and to guarantee women effective access to justice in cases of harassment and sexual and domestic violence.

5. The following recommendations are supported by Belgium, which considers that they have already been implemented or are being implemented: 140.8, 140.21, 140.25, 140.34.

6. Belgium takes note of recommendations 140.2, 140.3, 140.7, 140.20, 140.23, 140.30, 140.31, 140.32, 140.33 and recalls that it had already taken note of recommendations 141.1 to 141.36. These are recommendations that Belgium cannot commit to implementing at present, irrespective of its agreement or otherwise with the underlying principles. Belgium submits the following information by way of explanation for its decision regarding these recommendations.

7. 140.2, 140.3. Minorities in Belgium are protected by numerous national and international mechanisms, but the Framework Convention for the Protection of National Minorities has not yet been ratified. On signing the Framework Convention, Belgium entered the following reservation: "The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority shall be defined by the inter-ministerial conference of foreign policy." This issue falls under the remit of federal and federated entities. Despite the serious efforts made to date, the proposals put forward have not met with the agreement of all the parties. All the authorities are nevertheless committed to actively continuing with this work. A working group under the inter-ministerial conference of foreign policy has been set up to that end.

8. 140.7, 140.14, 140.20. Belgium undertakes to develop a national action plan against racism, xenophobia and intolerance. In fact it is already possible to prosecute and punish acts of racism, discrimination and xenophobia in Belgium. From a legal standpoint, the wording of the recommendation suggests that it is possible to prevent all forms of racism, discrimination and xenophobia by means of a legislative act, which is not the case in practice.

9. 140.23. Belgium has an effective monitoring body, the Committee P, which is an independent committee under the authority of parliament, and this provides all necessary guarantees of the independence, effectiveness and objectivity of monitoring. The independence, neutrality and impartiality of investigations conducted by the Committee P investigating service, or of the members of that service, have never been called into question.

10. 140.30. The Belgian legal framework as it stands makes it possible to punish violence against children. Deliberations are under way to determine whether adjustments to the legal framework are necessary or desirable.

11. 140.31. The fight against poverty, especially child poverty, is a priority for the Government. A second national plan to combat child poverty is in preparation. At present the Belgian Government cannot undertake to develop a data-collection system specifically on child poverty.

12. 140.32. The question of the right to food is addressed by various laws and social measures in Belgium. The Belgian Government has no plans for generic legislation in this area.

13. 140.33. Belgium attaches great importance to equal rights for persons with disabilities. Equal rights and protection against discrimination are enshrined in the Belgian Constitution and the legislation of the various levels of government. Belgium therefore considers that it is not appropriate to establish a separate legal framework for particular rights such as the rights to education and to employment. At both the federal level and the level of the federated entities measures are taken and action plans are implemented to effectively guarantee the rights of persons with disabilities to education, employment and medical treatment.

14. 141.1. Following its first universal periodic review in 2011, Belgium reviewed its reservations and interpretative declarations to human rights treaties, in the light of developments in Belgium. This review led to the conclusion that these reservations and declarations were still justified. In many cases their purpose is to clarify the legal situation in Belgium, and they are in no way an impediment to compliance with or implementation of these treaties in Belgium.

15. 141.2, 141.3, 141.4, 141.5, 141.6, 141.7. Belgium attaches great importance to respect for migrants' rights but cannot at present consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. One of the peculiarities of the Convention is that it grants equal rights to migrant workers in a regular situation and migrant workers in an irregular situation. This approach is different from the one taken in national and European Union regulations, which make a clear distinction between the two kinds of migrants.

16. 141.8. Given that the aims of the 1960 Convention against Discrimination in Education have already been achieved de facto by other later instruments, Belgium does not consider it necessary to ratify that convention.

17. 141.10. Belgium is committed to working towards the establishment of a national independent human rights mechanism that complies with the Paris Principles. However, given the complexity of the issue and the number of stakeholders involved, a deadline of the end of 2017 appears unrealistic. It is expected to be in place by the end of the parliamentary term in 2019.

18. 141.11. Belgium tends rather to take a sector-by-sector approach to the promotion and protection of human rights and it has already developed several action plans in various matters (e.g., combating all forms of gender-based violence, combating homophobia and transphobia, combating trafficking in human beings, combating poverty, and children's rights, at the level of the federated entities), which cover a wide range of priority areas of human rights.

19. 141.12. Belgium has maintained an open invitation to all special rapporteurs since 2001. Accordingly, any rapporteur or working group that so requests will be made welcome in Belgium at their earliest convenience.

20. 141.13. Given the importance attached to freedom of association as enshrined in its Constitution, Belgium does not consider it appropriate or effective to declare organizations illegal. The legislation currently at its disposal allows it to take effective action in this area. It is recalled that incitement to racial hatred is one of the legal limitations on the freedom of

expression and as such is punishable in Belgium under article 20 of the Anti-Racism Act. Organizations with legal personality may be prosecuted on those grounds and sentenced (criminal fines). They cannot be ordered to disband but in practice that is often what happens. Members of organizations or de facto associations (the majority) may be prosecuted individually under article 20 or 22 of the Act (prohibiting membership of a group or association which manifestly and repeatedly advocates racial discrimination or segregation, or the lending of assistance to such a group) and sentenced as appropriate to fines and/or prison terms. Numerous court decisions have already been taken in this context in Belgium.

21. 141.14. Belgium wishes to clarify that there is no legislation governing due process and imprisonment with specific reference to terrorism. The standards of ordinary law therefore apply. In addition, any action by the police is part of their official mission and must be carried out in accordance with the strict conditions set by the law. The law clearly prohibits any discrimination based on various protected criteria, such as ethnicity, including in the drafting of official documents or records by the police, and provides for criminal sanctions against any police officer found guilty.

22. 141.15. Belgium considers that its definition of torture is consistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; indeed it goes even further, since the Belgian Criminal Code punishes such acts when committed by private individuals as well as when committed by officers of the State.

23. 141.16. Incidents of excessive use of force by public officials are subject to impartial investigation and prosecution in Belgium. If the facts are proved, the perpetrators are punished. Under certain conditions they may, like any other citizen, be granted non-custodial alternatives (deferment of judgment, suspended sentence, probation, community service). In short, racism, discrimination and incitement to racial or religious hatred are prohibited in Belgium and punished accordingly.

24. 141.17. Specific reforms are under way. In effect what is crucial is not to reform the prison system but to properly implement the measures taken to improve prison conditions. Belgium has taken a series of initiatives in recent years to reduce prison overcrowding. Three new prisons have been opened and more new prisons are planned. Belgium has also launched a series of investment initiatives to refurbish existing prisons (national report, paras. 18-20).

25. 141.18. The improvement of prison conditions receives special attention at all times.

26. 141.19. The supervision of women prisoners is not the job of the criminal police (*police judiciaire*). There is therefore no direct contact between such officials and women prisoners.

27. 140.28, 141.20, 141.21, 141.22, 141.23, 141.24. Belgium does not deem it appropriate to adopt additional legislation criminalizing all acts of violence against women; the various possible forms of violence are already criminal offences under numerous laws. An offence specifically relating to women would necessarily be of limited scope, whereas a range of offences, reflecting the various types of actions and specifying aggravating circumstances, would seem to be a more effective basis for targeted prosecution. Lastly, it should be recalled that marital and partner rape is specifically punishable (Criminal Code, art. 375) and that violence against a spouse or partner is an aggravating circumstance (Criminal Code, art. 410, on intentional homicide not categorized as murder, and intentional bodily injury; in 2003 an augmented penalty was added).

28. 141.25. Pretrial detention is not systematically used in Belgium as there are already alternative measures (national report, para. 10).

29. 141.26. Belgium recognizes the valuable contribution that families can make to the strengthening of our societies, and understands the need to support them in their role, while also recognizing the diversity of forms that families can take. Belgium respects the obligation of States to promote and protect the human rights of individual members within families, in accordance with article 23 of the International Covenant on Civil and Political Rights.

30. 141.27. The Belgian Constitution provides for the separation of State and religion and the State may therefore not interfere in the organization of religious groups. Nevertheless, certain religious practices may be regulated (for example, the ritual slaughter of animals), in collaboration with the representative organization of Muslims.

31. 141.28, 141.29, 141.32. In Belgium, the freedom of religion is protected by the Constitution and a very comprehensive legal framework prohibits direct and indirect discrimination, including discrimination based on religion. However, the freedom to express one's religion or belief may be subject to restrictions, as provided in article 18 of the International Covenant on Civil and Political Rights. There is no legislation regulating the wearing of the veil in schools. It is up to each educational establishment to decide to authorize or prohibit such distinctive signs under its rules and regulations.

32. 141.30, 141.31. Belgium considers it important to retain the offences of slander and defamation, for protection should cover not just people's physical integrity but also their honour and reputation. Victims can opt for a civil procedure, but it is not always easy to adduce evidence in these matters and the investigative methods available to the public prosecutor (or the investigating judge) may be the only way to establish the facts. Thus, as far as the constituent elements of such offences are concerned, these do not constitute a disproportionate impairment of the freedom of expression as enshrined in the Belgian Constitution.

33. 141.33. Belgium does not intend to withdraw its declaration on article 2 of the International Covenant on Economic, Social and Cultural Rights and of the Convention on the Rights of the Child in respect of the principle of non-discrimination. Belgium does not consider it incompatible with article 2. On the contrary, it is consistent with the interpretation of this principle given by the Belgian Constitutional Court, the European Court of Human Rights and both committees. Thus, making a distinction between nationals and foreigners is not discriminatory when it is based on objective and reasonable criteria that are accepted by all democratic societies.

34. 141.34. The detention of asylum seekers at the border has never been automatic and when it happens it is carried out in accordance with international obligations.

35. 141.35, 141.36. It is not up to the Belgian State to prepare studies on the impact on the human rights of local communities in third countries of agro-fuel projects promoted by Belgian companies. However, a national action plan on businesses and human rights, which includes a component on raising awareness among companies about human rights, is being finalized (national report, para. 85).